

EMMANUEL M. GREEN

V.

Respondent

ACE AMERICAN INSURANCE COMPANY

Docket No. 1,073,388

Did claimant's right hip injury arise out of and in the course of his employment, including whether his accident was the prevailing factor causing such injury?

FINDINGS OF FACT

Claimant began working for respondent in November 2014, as a forklift driver. On December 13, 2014, claimant was scanning incoming packages and as he walked down a narrow aisle, his right foot caught on a pallet, causing him to trip. When he tripped, claimant did the “splits”, with his left leg extended in front and his right leg behind. Claimant testified he experienced immediate pain in his right foot, extending up his right leg. Claimant alleges injuries to his right and left hips, pelvis, groin, thighs, and right foot.

Respondent sent claimant to Concentra, where claimant received treatment for his right foot and left leg. Pain medication did not improve claimant’s pain, and physical therapy was prescribed. According to claimant, the therapy caused pain in his groin and thighs.

Claimant was referred Dr. Eden Wheeler, who claimant saw initially on February 17, 2015. Claimant testified he told Dr. Wheeler he experienced pain in his groin and both hips. Dr. Wheeler’s records indicate claimant only injured his right great toe at the time of his accident, but he had left and right groin pain by the next morning. Dr. Wheeler’s records indicate claimant told the doctor his right toe pain had resolved and his current complaints were bilateral groin pain, pain in his medial thighs, but not in the inguinal areas, left greater than right. Claimant reported he experienced bilateral symptoms since the accident.

Dr. Wheeler’s diagnoses were bilateral medial thigh pain/hip adductor strain, greater on the left than the right; left gluteal pain, likely piriformis syndrome; and resolved right toe pain. Dr. Wheeler recommended no additional diagnostic testing or invasive treatment. The doctor’s records noted claimant’s pain involved the medial thighs rather than the inguinal areas, with no signs of labral or hip joint pathology. Claimant’s painful popping was related to local inflammation. Dr. Wheeler recommended modified duties of no lifting, infrequent standing/walking, and changing positioning at will. Dr. Wheeler prescribed physical therapy and medication. Claimant testified the treatment provided by Dr. Wheeler did not work.

Dr. Wheeler’s records reveal claimant returned on March 23, 2015, following a left hip MR arthrogram on March 20, 2015. The testing report revealed evidence of a superior acetabular anterior labral tear and cam-type¹ femoral acetabular impingement. Dr. Wheeler’s impression was claimant had left greater than right hip/groin pain, with an inconsistent examination. Despite the inconsistent examination, and in view of the evidence of a left hip labral tear, Dr. Wheeler recommended referral to an orthopedic specialist for probable surgical intervention for claimant’s labral pathology. Claimant again reported bilateral hip symptoms related to his injury.

¹ “Cam” in this context is an abbreviation for camshaft, which the femoral head and neck resemble.

Claimant testified Dr. Wheeler referred him to Scott A. Wingerter, M.D. Dr. Wingerter's records indicate he initially examined claimant on April 7, 2015. Dr. Wingerter's examination of both hips showed groin pain and medial thigh pain, worsened with anterior impingement testing with flexion and internal rotation, and posterior pain with range of motion. Dr. Wingerter noted no neurological deficits.

Dr. Wingerter's records indicate he reviewed the MR arthrogram of the left hip and opined claimant had a left femoral-acetabular impingement with labral tear. He and claimant discussed surgical treatment of the left hip. Dr. Wingerter records note:

He does have similar symptoms on the right side consistent with possible labral tear. We will focus on the left hip for now with further workup of the right hip depending on his progress with the left. I anticipate full recovery following surgery to take approximately 4 months.

. . .

Causation: It is my opinion, to a reasonable degree of medical certainty, that the patients complaints of left and right hip pain are related to his work injury. I believe his fall at work is the prevailing cause of his current diagnosis and the need for treatment.²

Dr. Wingerter surgically repaired the left hip labral tear on May 6, 2015. Claimant returned to the doctor on May 22, 2015. The doctor's note states:

He does continue to complain similar symptoms on the right side.

. . .

He does have ongoing pain on the right side. [We] discussed the possibility of proceeding with MRI arthrogram for further evaluation on that side. We will see how he progresses with physical therapy over the next month I will plan to see him back. If he does have continued pain on the right side, MR arthrogram would be warranted at that time for evaluation of possible surgical intervention on the right as well.³

Dr. Wingerter's records of June 19, 2015 note:

He does have ongoing pain on the right side. [We] discussed the possibility of proceeding with MRI arthrogram for further evaluation on that side. I do believe MR

² P.H. Trans., Cl. Ex. 1 at 5.

³ P.H. Trans., Cl. Ex. 1 at 6 and 8.

arthrogram is warranted due to his ongoing pain and possible need for evaluation of possible surgical intervention on the right as well.⁴

On July 13, 2015, claimant underwent physical therapy. Medical records of Mary Jo Hegstrom, PT, indicate:

Patient presents with signs and symptoms that are consistent with: post op L hip labral repair and osteochondroplasty, arthroscopic, with similar injury to R hip.

. . .

[Pt] is continuing to report high levels of pain in bilat hips.

. . .

Would like to progress to more clinic visits, with PROM, and strengthening, but the progress of the L hip is being impeded by the complaints about the R hip pain; he reports the R LE gives way sometimes, although this has not been observed.⁵

On July 15, 2015, Dr. Wingerter's notes indicate claimant was better and making progress.

He does continue to complain similar symptoms on the right side and feels that it is acting up more than it was. He feels that he is limited by the right hip. He has had pain in both hips all along.⁶

Dr. Wingerter's notes indicate claimant's right hip examination showed abnormal pain and tenderness; groin pain and medial thigh pain worsened with anterior impingement testing with flexion and internal rotation; and posterior pain with range of motion. Dr. Wingerter's assessment was "RIGHT hip pain consistent with labral tear."⁷ Dr. Wingerter's records state:

He does have ongoing pain on the right side. We discussed the possibility of proceeding with MRI arthrogram for further evaluation on that side. I do believe MR arthrogram is warranted due to his ongoing pain and possible need for evaluation of possible surgical intervention on the right as well.⁸

⁴ P.H. Trans., Cl. Ex. 1 at 11.

⁵ P.H. Trans., Cl. Ex. 2 at 4.

⁶ P.H. Trans., Cl. Ex. 1 at 13.

⁷ P.H. Trans., Cl. Ex. 1 at 14.

⁸ P.H. Trans., Cl. Ex. 1 at 15.

Dr. Wingerter recommended an MR arthrogram of claimant's right hip.

PRINCIPLES OF LAW AND ANALYSIS

The undersigned Board Member finds the preponderance of the credible evidence supports the preliminary hearing Order and it is affirmed in all respects.

The issue presented here requires no lengthy citation of the statutes or case law, nor is a detailed analysis necessary. The testimony of claimant supports the finding claimant injured both his left and right hips in the December 13, 2014 accident. Claimant consistently reported right as well as left leg and hip pain to Dr. Wheeler and Dr. Wingerter, a treating physician authorized by respondent, and documented in the physical therapy records. According to claimant, he received authorized physical therapy for his right hip as well as left. The evidence established claimant's hip injuries arose out of and in the course of his employment, and the accident was the prevailing cause of claimant's injuries, medical condition and need for treatment. Dr. Wingerter's causation and prevailing factor opinions are unrefuted.

As noted by the ALJ, the very nature of claimant's accident, which resulted in claimant doing the "splits," makes a bilateral hip injury seem reasonable and probable. This Board Member notes the advantage the ALJ had in viewing claimant's testimony and judging his credibility in person.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

Claimant's right hip injury arose out of and in the course of his employment, and his accident was the prevailing factor causing such injury.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the preliminary hearing Order of Administrative Law Judge Kenneth J. Hursch dated October 28, 2015, is affirmed.

⁹ K.S.A. 44-534a.

IT IS SO ORDERED.

Dated this _____ day of February, 2016.

HONORABLE GARY R. TERRILL
BOARD MEMBER

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Honorable Kenneth J. Hursch, Administrative Law Judge